

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

## DISPOSITION

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thursday, April 12, 2012  
10:07 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporters  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY  
3 By: Aloke Chakravarty and Jeffrey Auerhahn,  
4 Assistant U.S. Attorneys  
5 John Joseph Moakley Federal Courthouse  
6 Suite 9200  
7 Boston, Massachusetts 02210  
8 - and -  
9 UNITED STATES DEPARTMENT OF JUSTICE  
10 By: Jeffrey D. Groharing, Trial Attorney  
11 National Security Division  
12 950 Pennsylvania Avenue, NW  
13 Washington, D.C. 20530  
14 On Behalf of the Government

15 CARNEY & BASSIL  
16 By: J.W. Carney, Jr., Esq.  
17 Janice Bassil, Esq.  
18 John E. Oh, Esq.  
19 20 Park Plaza  
20 Suite 1405  
21 Boston, Massachusetts 02216  
22 - and -  
23 LAW OFFICE OF SEJAL H. PATEL, LLC  
24 By: Sejal H. Patel, Esq.  
25 101 Tremont Street  
On Behalf of the Defendant

1                   THE CLERK: All rise.

2                   (The Court enters the courtroom at 10:07 a.m.)

3                   THE CLERK: For a sentencing in the case of  
4 Tarek Mehanna, Docket 09-10017. Would counsel identify  
5 yourselves for the record.

6                   MR. CHAKRAVARTY: Good morning, your Honor. For the  
7 government, Assistant U.S. Attorneys Aloke Chakravarty, Jeffrey  
8 Auerhahn and Counterterrorism Section Attorney Jeffrey  
9 Groharing.

10                  THE COURT: Good morning.

11                  COUNSEL IN UNISON: Good morning, your Honor.

12                  MR. CARNEY: Good morning, your Honor. J.W. Carney,  
13 Jr., for Tarek Mehanna. With me is my co-counsel, Janice  
14 Bassil, as well as Segal Patel and John Oh.

15                  THE COURT: Good morning.

16                  MR. CARNEY: Good morning, your Honor.

17                  THE COURT: Let me make a couple of preliminary  
18 comments before we begin to address the substance of the  
19 matters. First of all, the jury's verdict in this case is not  
20 an issue and I accept it as, of course, any sentencing judge  
21 must. It is also my judgment that the verdict was, in all  
22 respects, supported by evidence produced in the course of the  
23 trial. But a sentencing hearing is not an occasion for  
24 questioning or revisiting the verdict.

25                  The parties have submitted a good deal of material in

1 support of their respective positions on sentencing issues. I  
2 have read and considered that material carefully, as I have the  
3 presentence report prepared by the probation office. And let  
4 me take this opportunity to thank our probation office and, in  
5 particular, Ms. Sinclair for the fine work she has done in this  
6 difficult case. So because I have studied the materials, I ask  
7 that counsel, in their oral arguments, to assume my close  
8 familiarity with the materials submitted and to try to minimize  
9 any redundancy.

10 Mr. Carney had previously indicated on behalf of the  
11 defendant his wish to have Dr. Ahmed Mehanna and Mrs. Mehanna  
12 make brief oral statements, and I had denied that request.  
13 This is consistent with my usual and customary practice to  
14 limit presentations at sentencing hearings to the defendant and  
15 to counsel only, and I adhere to that practice in this hearing.  
16 As opposed to oral statements, however, I routinely welcome,  
17 and have done so in this case, written submissions through  
18 counsel. And as I've noted, I have reviewed and considered  
19 those submissions in this case, including letters from each of  
20 the defendant's parents and from his brother. And I assure  
21 them that they have, in fact, been heard.

22 Consistent with applicable procedures, we will  
23 consider the issues this morning in this order: First, we will  
24 determine what sentencing range emerges as a recommendation  
25 from the proper application of the United States Sentencing

1 Guidelines; second, we will consider whether the Court should  
2 consider an authorized departure from that range consistent  
3 with guideline principles; and finally, we will consider the  
4 multiple factors set forth in the sentencing statute, 18 U.S.  
5 Code Section 3553(a), to determine an appropriate sentence.

6 In our federal system we take care to give sentencing  
7 decisions careful and detailed consideration. The process and  
8 sequence of decision-making, as I've just outlined it, for this  
9 morning are an example of that care. The parties' views are  
10 solicited early in the process in dialogue with the probation  
11 office, and at every stage decisions impacting the ultimate  
12 sentencing judgment are guided by specific address to any issue  
13 that may or should affect the outcome.

14 It is important to understand that sentencing  
15 judgments are not simply the product of one mind. The judge is  
16 not a monarch. In addition to input from the parties and the  
17 probation office, a sentencing judge also must consider the  
18 views of the lawmakers who adopted the relevant criminal  
19 statute and established its general range of sanction as well,  
20 of course, as the Sentencing Commission, which, with the  
21 approval of the Congress, has adopted and explained relevant  
22 Guidelines. Congress and the Sentencing Commission speak  
23 generally, however, while a sentencing judge thinks  
24 particularly with regard to the features of the present case.  
25 Consequently, it can also be important to consider what other

1 judges have decided in similar circumstances.

2 So the responsibilities for sentencing decisions are  
3 shared in this sense, and a sentence in a particular case is  
4 not simply the product of an individual, perhaps even  
5 idiosyncratic, judgment by the sentencing judge, but rather,  
6 the result of a broadly considered judgment that respects the  
7 roles and views of other courts and other branches of the  
8 government. And, of course, serious consideration of the  
9 Guidelines' recommendation is one way of consulting the views  
10 of other sentencing constituencies.

11 And as a final preliminary matter let me say what I  
12 hope is obvious. No judge I have ever known approaches the  
13 responsibility of imposing criminal punishment on the defendant  
14 with any sense of relish or eagerness. It is a necessary duty,  
15 solemnly performed after thorough reflection, consistent with  
16 the judge's oath and obligation.

17 Now, as I've said, a starting point for the  
18 consideration of all the factors that may bear on an  
19 appropriate sentence is the recommendation that emerges from an  
20 application of the Sentencing Guidelines. The probation office  
21 has prepared a thorough presentence report which proposes an  
22 application of the Guidelines in this case. I know that in  
23 some respects each side has some disagreement with that, and I  
24 think an efficient way to address it is to simply take the  
25 relevant parts of the presentence report and move through them

1 and make rulings as they are presented in sequence by the  
2 numbered paragraphs.

3 So I start with Paragraph 66 which recommends that the  
4 Guidelines Manual to be employed in this project is the current  
5 Guidelines Manual effective November 2011. I think the  
6 defendant has a different view. And if you want to address  
7 that, I'll hear from you now.

8 MR. CARNEY: Your Honor, when we received the  
9 presentence report we sent a list of very specific objections  
10 to probation. We've also submitted to your Honor, as you know,  
11 a separate document that addresses each of our objections with  
12 citations to case law, legislative intent, and other factors.

13 We are content to rest on our memorandum regarding  
14 those objections. I'm confident your Honor has looked at them  
15 carefully, reviewed the backup that we have presented. And we  
16 are certainly available to answer any specific questions your  
17 Honor might have. But if you do not, we want to be mindful of  
18 the fact that your Honor has indicated that you've read this  
19 material carefully and would be grateful if we were not simply  
20 repeating what we've already given you in writing.

21 THE COURT: Thank you. I have looked closely at this,  
22 and my conclusion is, in accordance with the prescriptions of  
23 the Guidelines themselves, that the current manual is the  
24 manual to be applied. There are, I think, two issues: One is  
25 which manual should be applied under the Guidelines themselves;

1 and the second is a question of ex-post-facto considerations.  
2 I'm not sure it's necessary to reach that constitutional  
3 question. The First Circuit has recently indicated in a case  
4 called *Rodriguez*, I believe, that it's preferable not to reach  
5 the constitutional question if it's not necessary.

6 I think that the decisions that we will make regarding  
7 the Guidelines and the ultimate effect of those decisions will  
8 not have an ex-post-facto effect, and so we need not reach the  
9 question of whether if it did in some way, that would  
10 invalidate the application of the current guideline. So I will  
11 use the current manual.

12 In Paragraph 67 the PSR identifies the specific  
13 Guidelines to be used for each of the several counts of the  
14 indictment. And without repeating it all, I believe that that  
15 is a correct assignment of the relevant individual guideline  
16 provisions.

17 The next point that I would confirm is in Paragraphs  
18 68 and 69 which is, again, consistent with the Guidelines  
19 themselves, the seven counts should be grouped, as that is done  
20 under the Guidelines, and that when that is done, the  
21 computation for the count that yields the highest score is the  
22 one that is used for determining the proposed range.

23 So let's turn to Count 1. The guideline that applies  
24 is 2M5.3. It has a base offense level of 26. I think that's  
25 uncontroversial. The first adjustment that is made is under

1 2M5.3(b)(1)(E), and I believe that has not been objected to.

2 Let me move to Paragraph 73 which proposes an  
3 adjustment because the intended victims of the offense were  
4 government officers or officials or employees. The defense has  
5 objected to this. And I think just to, again, try to be  
6 efficient, I agree with the objection. I think that the  
7 adjustment under 3A1.2(a)(1)(A) requires specified individuals  
8 and not generalized reference to government employees. It's  
9 not an entirely clear matter. I think it's the better  
10 interpretation. And I think in matters with close questions  
11 such as this, the benefit of the doubt should go to the  
12 defendant.

13 Paragraph 74 suggests a victim-related -- well, it's  
14 called "victim-related" in the PSR. It's actually a terrorism  
15 adjustment of an upward level 12 increase pursuant to 3A1.4(a).  
16 The defense has also objected to this, but I think their  
17 objection is essentially a third-stage objection, if I can put  
18 it that way, not that the Guidelines applied on their own terms  
19 don't call for it, but that it shouldn't be none. In the  
20 papers the defendant has argued that some judges have declined  
21 to do it and so on. I take that not as an interpretation of  
22 the Guidelines but as a variance from them, and we'll address  
23 that at that point. I think it is an orthodox application of  
24 the Guidelines to give the 12 levels.

25 The defendant has also argued for a minor role

1 adjustment in the guideline. Having considered that, I think  
2 that it is not appropriate to give a minor role. As a matter  
3 of fact, as I will perhaps refer to later as we discuss some of  
4 the details of the case, my understanding of the evidence is  
5 that among the group of relevant participants here in the  
6 Massachusetts area, the defendant is more likely to have been  
7 seen as one of the leaders rather than a minor participant. I  
8 don't make an adjustment for leadership, but I just mention  
9 that to counter the suggestion that there might be a minor role  
10 assessment.

11 The government asks for a special skills adjustment of  
12 two levels under 3B1.3. And I do not think that is  
13 appropriate. I don't think language skill by itself,  
14 particularly for a person such as Mr. Mehanna whose skill in  
15 Arabic is likely close to a native language, even though he  
16 was, of course, born in America -- he's probably been speaking  
17 English equally long. I noted at some point, I can't identify  
18 it exactly, that Arabic is frequently spoken in the home. And  
19 I think that that does not qualify as a special skill for  
20 purposes of the Guidelines.

21 In Paragraph 75 the presentence report proposes an  
22 obstruction of justice two-level increase for Count 1 and for  
23 some of the following counts. I believe that is a correct  
24 adjustment. And I rely on Application Note 8 to Guideline  
25 3C1.1 which indicates that when there are multiple counts of

1 conviction, one of which is an obstruction count, it is  
2 appropriate in scoring to give the adjustment.

3 So to recap Count 1: base level of 26; adjustment  
4 under 2M5.3 of 2, which is 28; a further adjustment of 12, the  
5 terrorism adjustment, which is 40; and the obstruction which is  
6 42.

7 Many of the proposed adjustments and actual  
8 adjustments that we've just addressed follow in subsequent  
9 counts. I don't think it's necessary to repeat those. But in  
10 Count 2 there was a question, anyway, about the proper base  
11 offense level. I think that's been resolved by my conclusion  
12 that the current Guidelines Manual applies, and so it is a 33.  
13 Again, making no role adjustment, no special-skill adjustment,  
14 no separate victim-related adjustment for officers of the  
15 government, making the terrorism adjustment and the obstruction  
16 adjustment, Count 2 becomes a level 47. And that is true of  
17 Counts 3 and 4 as well for the same reasons.

18 Counts 5 through 7 are governed by the obstruction  
19 guideline 2J1.2. The base offense level of 14, an adjustment  
20 sufficient to bring the adjusted level to 32, which is an  
21 18-point adjustment. And so the score is 32 for Counts 5  
22 through 7.

23 Now, 3A1.4(b) also provides that the criminal history  
24 should be deemed to be a Category VI. So the highest score on  
25 this application of the Guidelines would be a level 47 at a

1 Category VI, which is literally off the charts, and the  
2 recommended sentence under those conditions from the Guidelines  
3 is a life sentence. I don't think there's any point in -- even  
4 before we get to the specifics of an appropriate sentence --  
5 considering that a life sentence is an appropriate sentence. I  
6 do not intend to impose a life sentence in this case. Even the  
7 government does not recommend that. This will be a term of  
8 years, and it will be affected by the sentencing factors of  
9 Section 3553(a).

10 So we've completed the first step. I don't think  
11 there are any suggestions of an authorized departure within the  
12 Guidelines regime. There are, of course, arguments for a  
13 non-guideline sentence under the doctrine of *Booker* and its  
14 following cases. So with that in mind, I'll entertain  
15 specifically your recommendation for a given sentence in light  
16 of all the statutory factors.

17 MS. BASSIL: Your Honor, before we proceed, this  
18 morning while I was in the hallway a juror approached me, and  
19 she is here in the courtroom today, and she has stated that she  
20 wants to speak at sentencing and she would like to be heard by  
21 the Court. She had stated that when -- I guess when you talked  
22 to the jurors, you had said if they had any issues they could  
23 come back. She's back. She would -- and she is here today and  
24 she would like to be heard, and I think she should be heard,  
25 your Honor.

1                   THE COURT: I see no reason to do that.

2                   MS. BASSIL: Well, I would like to make an offer of  
3 proof, your Honor, of what she would say.

4                   THE COURT: You can submit one in writing.

5                   MS. BASSIL: Your Honor --

6                   THE COURT: No, I don't want to get into that. It  
7 would be highly unorthodox, contrary to the law. And I am  
8 confident that if I said to the jurors informally that they  
9 were welcome back, it was if they had an interest in the  
10 proceedings, not as a participant in the proceedings. So it  
11 would be highly irregular. And I won't even at this point  
12 entertain an offer on it. If you want to complete the record  
13 by a written offer subsequent to sentencing, I'll permit that.

14                   Mr. Chakravarty?

15                   MR. CHAKRAVARTY: Your Honor, you sat through this  
16 trial. True to form, I'm not going to repeat all of the  
17 evidence. It's impossible to summarize the insight into the  
18 defendant that your Honor had.

19                   As we assess especially the 3553(a) factors, we should  
20 not dismiss entirely the value assessment, the considered  
21 opinion of the Sentencing Commission in setting one data point  
22 for the Court, one that the government is clearly not arguing  
23 is the only appropriate sentence in this case. But as I'm sure  
24 your Honor has struggled with, to find the relevant factors  
25 with which to quantify a term of years is no small feat, to do

1       it accurately, considering any mitigating factors as well as  
2       the gravity of the offense here. And so that's where I want to  
3       start, at the gravity of the offense here.

4               The crimes that the defendant has been convicted of  
5       are amongst the most serious in our system of justice. In the  
6       federal criminal law, they are uniquely suited to punishment  
7       and deterrence through criminal procedure. It's the only way  
8       to prevent people from becoming homegrown violent extremists  
9       who would embark on campaigns to kill soldiers of the very  
10      country in which they live. That was the harm here. That is  
11      the nature of the offense, and it's one that statutorily calls  
12      for up to a life sentence. The Guidelines say based on those  
13      factors that a life sentence is appropriate. And so with that  
14      in mind, what about this defendant can you look at to see on  
15      that spectrum of thought to action, to actually committing a  
16      successful offense of actually killing soldiers, where does the  
17      defendant fit?

18               In this case we focused a lot on Yemen; we focused a  
19      lot on his activities online, recruiting others, providing  
20      support for al Qa'ida; we focused a lot on his obstructive  
21      activities. And those are the natures of the harms that he  
22      caused. But it didn't start with Yemen, your Honor; it started  
23      back in 2001. Over a decade ago this defendant began to  
24      radicalize. This was not a flight of fancy. This was not a  
25      misunderstanding. If there was any misguiding involved, as

1 your Honor alluded to, it was this defendant that was  
2 misguiding others. It was this defendant who had the unique  
3 combination of knowledge, charisma, of persuasive ability in  
4 language to be able to bring others to his way of thinking, in  
5 this case a way of thinking which advocated for and conspired,  
6 ultimately, to visit violence upon Americans.

7           Regardless of where one sits on the spectrum of  
8 whether American foreign policy is legitimate or the war in  
9 Iraq is appropriate, when you conspire to take up arms against  
10 your country, it deserves severe penalties, not just to  
11 incapacitate an individual, but to deter that individual and  
12 all others who might embark on the same course of action or  
13 similar course of action in the future. And that's the lens  
14 through which I ask you to view what is the impact of the  
15 defendant's activity. What is the actual harm that he brought  
16 to visit?

17           And when he returned from Yemen, he didn't abandon --  
18 he didn't change his heart. He didn't abandon his ideas of  
19 even going over in an armed campaign. He discussed it again  
20 with Abousamra. He discussed the potential with  
21 Daniel Maldonado when, of all the people in the world to call,  
22 Maldonado called the defendant from Somalia. He discussed it  
23 again with his prospective wife, reaffirming that indeed he had  
24 tried to join that company but he was rejected because he  
25 didn't have sufficient people to vouch for him.

1                   Well, now this defendant is famous, your Honor. When  
2 he gets out of prison, whenever that is, this trial will be his  
3 credentials. He does have that credibility now, and I submit  
4 to you that's what he gained by embarking on his quest in  
5 Yemen. When he came back locally, I'd venture to guess that  
6 most people in the community had no clue as to what this  
7 defendant and his coconspirators had attempted to do. They had  
8 no clue as to how extreme his ideology had progressed, such  
9 that taking up arms was the appropriate answer.

10                  It's with that mentality that he then began  
11 cultivating others, some of whom testified in this courtroom;  
12 that he helped radicalize those individuals, empowered in part  
13 by his demonstrated commitment to the cause of al Qa'ida,  
14 Salafi jihadists, others who would take up arms against what he  
15 felt was his obligatory duty to stand up against the country in  
16 which he lived: them. To him the world was about "us,"  
17 Muslims who were being persecuted, and "them," the persecutor,  
18 the United States, this tribunal who is now going to be passing  
19 judgment on him.

20                  As we know, your Honor, he didn't just stay focused on  
21 exclusively armed campaigns against American soldiers. He then  
22 thought, as an opportunist: What else can I do to support that  
23 mission? If I am unsuccessful in going over myself, how can I  
24 motivate others? How could I motivate the Abu Bakrs and the  
25 Spauldings and the Massouds and the Maldonados to go and be

1 successful at what I tried and failed to do? And he found his  
2 niche.

3 Together with the Tibyan Publications folks, he  
4 developed this charismatic persona empowered largely because of  
5 his knowledge, because he had the credibility, because people  
6 knew about his prior failed campaign to Yemen in which he had  
7 collaborated with some of the Tibyan Publications folks. And  
8 it was with that credibility, with that nuanced understanding  
9 of the Salafi Jihadi message, al Qa'ida's messaging, with which  
10 he embarked on several translation products: "39 Ways," "Umar  
11 Hadid." You heard all about those. We've submitted papers  
12 describing how influential they are. We described Mr. Qureshi,  
13 who specifically asked for that just before he embarked on an  
14 armed campaign. But there were others, your Honor. There were  
15 such other messengers tested. There was "Tawhid of Action."  
16 There was "The Importance of the Word." There were other  
17 products that he published through Tibyan Publications for that  
18 same purpose.

19 I submit to you the impact of the harms created  
20 through that work lasts not just in those individuals whom he  
21 personally was able to touch by persuading that Osama bin  
22 Laden's message was the right one, but those products are still  
23 on the internet. Those products are still viral. People are  
24 still getting arrested for even possessing in some countries  
25 those products. Well, that's not a crime here. When he

1 translated and distributed those for that specific purpose so  
2 that others would be recruited into the cause that he was  
3 willing to sacrifice his life for, then in many ways he  
4 succeeded in his objective.

5 And the third nature of the harm, your Honor, is the  
6 obstructive conduct all throughout. After he returned from  
7 Yemen, it was not long after that he knew that the FBI had  
8 learned of what he had done, at least in some measure. And  
9 both through his false statements, of which he's been  
10 convicted, but also through every other opportunity where he  
11 has had to say something about his activity, about Abousamra's  
12 activity, about Maldonado's activity or any of the other people  
13 who engaged in terrorist activities, he has tried to obstruct,  
14 to impede, to thwart the FBI in learning anything that will  
15 protect the United States from terrorism. Because that's where  
16 his heart lies.

17 He told you as much in his submission to the Court  
18 when of all the things that he had to say to the Court for  
19 leniency in this case, at least in writing, he seized that  
20 opportunity to again point to the FBI for inconveniencing him,  
21 for again blaming the FBI for this plight that brings us here  
22 today. It's the absence of any recognition of responsibility  
23 for one of his actions.

24 And when he says it's a collision of two worlds  
25 colliding, I couldn't agree more. And when he says his heart

1 can't change or won't change or won't leave, I submit to you  
2 the criminal laws are not designed to change what somebody  
3 believes, and they won't in this case. And it's that person  
4 who we now have to decide what is the appropriate sentence  
5 based on proportionality, based on what he has done, what the  
6 impact of his crimes are, and based on what his opportunity is  
7 to change and to realize a potential that he threw away slowly  
8 over the last ten years.

9 He's rare in that he's one of very few individuals  
10 who's been charged with criminal offenses, that has tried to  
11 engage in terrorism acts himself, and recruited others  
12 persistently over a period of time, adapting his methodology,  
13 encrypting his communications. When his coconspirators were  
14 being arrested around the world, he didn't go underground. He  
15 specifically said that he should not stop the enterprise; they  
16 just have to be more careful. And he continued.

17 Deterrence in this case, your Honor, has been  
18 exhausted through means outside of this courtroom. And that's  
19 why the government feels that a very substantial jail sentence  
20 is necessary, in the first instance to incapacitate him, to  
21 prevent him from continuing to do these crimes, but also to  
22 specifically deter him from engaging in any terrorism-related  
23 crime when he gets out.

24 Another significant fact to consider in assessing this  
25 decade of activity, understanding that there were certain

1 portions of that decade in which he was much more active and  
2 much more influential than in others, is -- unlike in many  
3 other cases there was no government engineering here, your  
4 Honor. This was the defendant radicalizing with his colleagues  
5 here. It was the defendant persuading others what Sayyid Qutb  
6 and Abdullah Azzam and Osama bin Laden, amongst others, said  
7 and meant and believed. It was not a cooperator who was  
8 planting a seed into the defendant's mind to give him some  
9 low-hanging fruit to snatch onto, not to suggest that that's an  
10 improper technique in any way. But the defendant cannot hide  
11 behind some misguided principle of government sentencing  
12 entrapment or something else; this was entirely the defendant's  
13 creation. And it was only after the fact that the government  
14 was able to learn about what the defendant had done.

15 And it was in that vein that when he continued to  
16 obstruct government investigation, when he knew they were  
17 watching, he was telling others to be careful about what they  
18 said to him online. He told people not to say certain things  
19 openly. When he knew he was under investigation, that's when  
20 he chose to lie to the FBI about Daniel Maldonado. If we had  
21 known about the whereabouts -- if we had the details about  
22 where Daniel Maldonado and Omar Hamammi were before they  
23 embarked in actual military conflict, their lives would be very  
24 different, and so would the people who they may have been  
25 engaged in conflict with.

1                   But the most telling example of that, your Honor, is  
2 that if he had told us about what Abousamra and he had done two  
3 years prior, then Abousamra may never have been able to leave  
4 the country in the first place and evade the justice that is  
5 now being visited upon the defendant.

6                   And so in factoring our decision as to what an  
7 appropriate sentence is so that we can give you another data  
8 point around which you can establish what the appropriate  
9 sentence is, if a variance is appropriate, understand we have  
10 to leave room for Ahmad Abousamra who was equally as culpable,  
11 if not more; had personally embarked on the trips to Pakistan,  
12 the trip to Iraq that they had all discussed; and had talked to  
13 the defendant again about going back to Pakistan two years  
14 after the defendant had come back from Yemen. That was still  
15 what the defendant said he was thinking, the exact same thing.

16                   There was still a meeting of the minds. They had not  
17 abandoned any of their ambitions. And that is why I submit,  
18 your Honor, his obstructive conduct -- the impact of that  
19 obstructive conduct will last with us just as long as the  
20 impact of his translation activities, just as long as the  
21 impact of radicalization of individuals in our local community  
22 and others he knew through the internet. Those are lasting  
23 impacts. That's the nature of the harm that will impact this  
24 community for years to come.

25                   Unlike most other criminal terrorism defendants, his

1 influence -- this defendant's influence -- not just because of  
2 the media attention or because the courtroom is packed, but  
3 because he personally touched so many people in their path to  
4 radicalization -- some of them have fortunately withdrawn from  
5 that path, but we don't know who else this defendant  
6 radicalized, that he has wound up and sent along their way.  
7 And there's evidence that he has done that kind of  
8 radicalization.

9 There's Taimur. There's -- he talks about a guy named  
10 Abu Dawood. He talks about the witnesses who testified here.  
11 Those people are out there, amongst others, and that is the  
12 harm which these stringent, strict criminal laws are designed  
13 to deter people from embarking on. And so it's this principle  
14 of general deterrence that this defendant encapsulates that  
15 other criminal defendants don't.

16 People are watching this case not just because of the  
17 so-called constitutional issues or because there's some novel  
18 legal ground here. They're watching this case because what the  
19 defendant represents is the harm of homegrown violent  
20 extremism. It's the metastasization of this perverted  
21 interpretation of a great faith to motivate other people to  
22 take up arms against a country who is providing them  
23 protection, who's giving them an opportunity of freedom of  
24 religion and freedom of speech.

25 So in weighing how we can arrive at the government's

1 recommendation of a 25-year sentence with a term of supervised  
2 release to follow as long as the defendant stays in the  
3 country -- and I suggest that would mean essentially a life  
4 sentence with special conditions -- we're giving you a data  
5 point that we did not have ourselves. We have the Guidelines  
6 which consider the fact that terrorism cases are different.  
7 They're different because of the gravity of the harm. They're  
8 different because the nature of the individual is such that  
9 they're unlikely to change. They are more likely to repeat a  
10 terrorism-related crime. They're different because the nature  
11 of the offenses are so often complex.

12 And given that data point of a life sentence, we've  
13 given you another which we think is a reasonable sentence in  
14 this case, but not just to address the public safety functions.  
15 We pride ourselves, your Honor, on maintaining credibility with  
16 the Court when we weigh mitigating factors. And I submit to  
17 you, your Honor, the government knows this defendant as well as  
18 anyone, not just because we're familiar with the evidence,  
19 we've presented it to your Honor, but because of the nature of  
20 the evidence, the nature of the witnesses with whom we've had  
21 access to.

22 We can understand many of the mitigating factors which  
23 the defendant's family, for example, and community have  
24 presented before the Court. And we're not unmindful of those.  
25 But we've also seen the other side. We've seen the side that

1 can ignore those factors and, in fact, do insult to that  
2 community relationship and that family relationship because it  
3 was this defendant that brought that impact to his family. It  
4 was this defendant whose choices over time in the face of his  
5 parents trying to stop him, trying to discourage him repeatedly  
6 from embarking on this wrong path, to be dismissive, to be  
7 influential on others, and ultimately, now as we've seen after  
8 he's been in custody on this case, to be spreading  
9 misinformation so that he can reinvent himself as some type of  
10 a martyr to this community and to his family by telling a  
11 story -- a fictitious story -- about the person who they wished  
12 he was, not the person who actually you've had the opportunity  
13 to observe over the last couple of months.

14 And I thought, what is the most pithy way to  
15 encapsulate that person, the person about whom the government  
16 is concerned needs to be protected from society? We spared the  
17 jury the images of the beheadings that the defendant had on his  
18 computer and that he had distributed to others. We spared your  
19 Honor that. But I submit to your Honor, if one were to watch  
20 some of the videos that the defendant had distributed, talked  
21 about gleefully, there's a visceral reaction unlike anything  
22 else that you can see with your eyes when somebody, a civilian,  
23 has been held captive, he's restrained, his head is slowly  
24 sawed off while he's screaming, and then it goes silent, and  
25 then his head is held up to a camera.

1           There's a gut-wrenching visceral reaction to that that  
2 cannot be ignored. It captures what this defendant was at that  
3 time when he talked about that glowingly, when he thought that  
4 that was not only a justified action but that was the justice  
5 that was visited upon the country who had invaded a Muslim  
6 land. It was the defendant who talked about Texas BBQ being  
7 the only way to go when talking about the mutilation of burned  
8 American corpses overseas.

9           And to put context in that, your Honor, the question  
10 by the person he was talking to in that conversation was what  
11 is happening to the American soldier perpetrators of a rape in  
12 Iraq in the court system. And he says, "I don't care what's  
13 happening in the court system. Texas BBQ is the way to go."

14           It's the person who condemned Muslim-American  
15 advocates and others who proclaimed that moderation, and not  
16 violence, is the solution to enfranchisement and emboldening  
17 civil rights. Repeatedly. We quoted some of those materials;  
18 we don't need to repeat them here. It's the person who goes to  
19 Ground Zero to celebrate the acts of September 11th. And not  
20 more than two months ago, your Honor, after his conviction, in  
21 one of the exhibits that we've submitted as part of our  
22 sentencing submissions, this defendant, in going through a  
23 number of quotes that he is reading while he's in jail awaiting  
24 sentencing -- he first proclaims that he is 100 percent free of  
25 American oppression, but then he quotes Osama bin Laden's

1 interview with Tayseer Alouni of CNN a month after the  
2 September 11th actions as something that he is reading right  
3 now in jail. This is the person who you have to sentence and  
4 determine what is going to deter this person from engaging in  
5 support activities in the future.

6 Your Honor, it's ironic that after all this time the  
7 defendant has not acknowledged any activity -- any criminal  
8 activities in going to Yemen, in any of his preparatory actions  
9 in that respect. He still cloaks his activities with Tibyan  
10 Publications online in the First Amendment, and it's ironic  
11 that it was his conversations with his coconspirators in which  
12 they talk about the filthy Constitution and the cursed Bill of  
13 Rights which actually protects his conduct. And now he's  
14 trying to use that -- and I'm sure he will upon review -- to  
15 try to shield himself from criminal liability for actions that  
16 he embarked on for almost a decade persistently, consistently,  
17 in order to support organizations and individuals who were at  
18 war with the United States.

19 And so another point that we perhaps agree on is this  
20 case is unique and there are no comparison cases. And I submit  
21 to your Honor looking at comparisons of other cases is not  
22 useful in order to divine what term of years is the appropriate  
23 sentence here, and that's because there's no way through a few  
24 sound bytes or some effective advocacy that we're going to be  
25 able to convey to you the myriad of 3553(a) factors and the

1 complex series of decisions and facts that may have gone into  
2 any decision with another specific fact pattern.

3 There are, of course, overlaps. And it's not that  
4 those other cases are without any value, but I submit to you  
5 other cases are of value to your Honor in assessing how a court  
6 may have arrived at an opinion, the process. But the facts,  
7 especially of this case, where somebody is engaged in three  
8 types of harm over such a long period of time with such  
9 influence is exceptional.

10 And I submit to you the cases that are most  
11 instructive, especially with regards to process, are the  
12 appellate cases the government has cited. And it's not just  
13 because they were remanded sentences because there were  
14 sentences that were -- deemed to be too low, but I submit to  
15 you in all of those cases the government -- the court sentence  
16 was below the government's recommendation.

17 But in those cases they pointed to, specifically, the  
18 imperfection of looking at other district court cases to try to  
19 divine what the proper sentence might be in a case. And, of  
20 course, we could select some from the defendant's own  
21 submissions, individual cases from around the country that  
22 would, if that were the appropriate model, be influential to  
23 your Honor, you know, cases like *Kassir*; cases like *Tamimi*, one  
24 of the defendant's heroes; cases like *Abuali*; and cases like  
25 the Eastern District of New York case that was decided I think

1 just about last month, *Betim Kaziu*, who the government would  
2 argue was much less culpable than this defendant but in that  
3 case received a 27-year sentence. I could elaborate on those,  
4 but as I pointed out, other cases are not how your Honor should  
5 decide what this defendant should get.

6 And so we come back to this idea of deterrence, what  
7 the impact of the defendant's actions are and, ultimately, his  
8 risk of recidivism which I think, your Honor, the defense  
9 sorely misstates. The 3A1.4 enhancement expressly acknowledges  
10 that terrorism cases are different especially because of the  
11 likelihood of recidivism. The *Meskini* case which the *Jayyousi*  
12 court cited approvingly points out that terrorism defendants  
13 are at increased risk of repeating and less likely to be  
14 rehabilitated. And the nature of the harm in a terrorism case  
15 is potentially catastrophic impacting not just, you know -- not  
16 just society at large, but specific individuals in the worst  
17 way.

18 And it's this defendant where you don't have to rely  
19 upon just the reasoned assessment of the Sentencing Commission  
20 and these appellate courts. Over ten years you've seen that  
21 nothing would deter this defendant. Sure, he got smarter,  
22 sure, he adapted his techniques, but is there anything to  
23 suggest that he was ever contrite? Is there anything to  
24 suggest that he has looked back upon that life that he had led  
25 for most of his adult life? How do you deter somebody who told

1 his fiancée that he was willing to go to jail and even to die  
2 for his beliefs? And so he's reinventing himself now as this  
3 martyr that he was unable to become in the throes of his  
4 conspiracy.

5 Your Honor, I want to conclude with talking about the  
6 lingering impact on the community, on others who he  
7 radicalized, on people around the world who are consuming his  
8 work, people who -- not just English-speaking who he was able  
9 to make accessible the teachings of al Qa'ida and its  
10 supporters, but because the defendant translated materials into  
11 English, as the Lingua Franca, as Evan Kohlmann and others have  
12 said, it was that translation that was able to then be  
13 translated into other languages to be distributed all around  
14 the world to actually make a difference in influencing people  
15 to join a cause dedicated to violence.

16 That's what this case has always been about. It's  
17 about how he was influenced that way, it was how he influenced  
18 his coconspirators and those in the circle of the Massachusetts  
19 community, and it's how he continued to do so online in the  
20 face of people -- associates of his who had done -- who had  
21 participated in portions of his conspiracy, getting arrested.  
22 He continued to engage in his actions.

23 The damage that he has done will linger with us. This  
24 case isn't going away. It's going to be looked at in the  
25 future by people who are contemplating acts of violence. It's

1 going to be looked at by future courts. It's going to be  
2 looked at by the FBI and those in law enforcement who are  
3 trying to figure out: How do we keep this country safe from  
4 terrorist attacks? How do we prevent people from going  
5 overseas to engage in terrorist attacks? How do we prevent  
6 radicalization?

7 And there is learning here. And there's learning  
8 created by the defendant over a long period of time. And most  
9 importantly, his reticence to assist the government, and  
10 there's no -- I say that for a moment. He's perpetuated lies  
11 on the internet about the fact that this is somehow a malicious  
12 prosecution. And I recognize your Honor's not going to be  
13 considering that as part of a sentencing issue, but first, it's  
14 inaccurate; and second, there's nothing wrong with soliciting  
15 cooperation from someone in the community, even if it's  
16 testifying against a fellow Muslim, if it's going to keep  
17 people safe. And I think most of the people behind me agree  
18 with that. This defendant does not.

19 He has exhibited throughout the course of the trial  
20 evidence, as well as after trial, that if he can protect people  
21 who are trying to kill Americans because of their faith, then  
22 he will do so. That is one of these legacies that -- of the  
23 impact of his actions and his aggravating actions, I would  
24 argue, after the fact. The impact on the community, your  
25 Honor, I submit to you, is a reason why a lengthy prison

1 sentence is appropriate.

2 So finally, the Guidelines are, no doubt, a  
3 significant upward pressure, as they should be. The government  
4 has selected a data point for your Honor which is mindful of  
5 both the Guidelines as well as the 3553(a) factors, including  
6 the most important notion, I think, in the 3553(a) factors  
7 which is that this Court is trying to find a proportional  
8 sentence that is no greater than necessary. And that is a  
9 driving principle with which we arrived at this sentencing  
10 recommendation.

11 What the defendant will do after he gets out of jail  
12 one can only guess. We hope for the best. He will still  
13 be -- have productive years ahead of him when he gets out if he  
14 demonstrates any willingness to conform his behavior, to  
15 acknowledge what he has done. You can't change unless you  
16 acknowledge what you've done that was wrong. And this  
17 defendant simply has not done that. All of the evidence shows  
18 just the opposite. And so that's concerning, and that's one of  
19 the reasons why a supervised release period -- a lengthy  
20 supervised release period is necessary.

21 But supervised release, as your Honor knows, is no  
22 substitute for incapacitation. Whatever terrorism support  
23 crimes that he might do, whether it's here or overseas, he  
24 could do it on supervised release. It's simply a warning  
25 system or some way of holding accountable somebody who's done

1 that.

2 So it's this downward pressure of trying to find a  
3 sentence that is no greater than necessary that is at the other  
4 pole. And it's in that sense that the government thinks that  
5 the 25-year sentence is appropriate from the people who, I  
6 believe, know the defendant as well as anyone, who have  
7 considered all of the materials that the government -- that the  
8 defense has submitted, and knows some of the individuals who  
9 have spoken in support of the defendant.

10 I want to point to one point on that, and this will be  
11 in closing. And this is a submission by the defense. One of  
12 his supporters writes, "I'd like you to take a moment to  
13 imagine the current state of Muslims in Massachusetts alone.  
14 Our Islamic centers are cultural melting pots and adults often  
15 mix culture and politics with religion. In this state we have  
16 about 40 mosques, Islamic centers and prayer halls. At the  
17 same time we've had only two resident scholars (Imams) in the  
18 entire state for the last few years. Furthermore, these Imams  
19 are immigrants who live sheltered lives and lack an  
20 understanding of our society. What happens to our youth who  
21 become inclined towards faith? Where do they go to learn  
22 Islam? Who can teach them?

23 "Most end up on the internet where they learn from  
24 scholars in Saudi Arabia, Egypt and Yemen. Some scholars are  
25 mainstream; others walk a dangerous path. It's very hard for

1 some to distinguish between the two because some scholars  
2 present a moderate view of Islam and slowly pull people into a  
3 more radical version."

4                   This supporter, your Honor, is describing the  
5 defendant. The evidence of that came in to demonstrate that  
6 over a ten-year period, that's what he did. So to suggest  
7 there's nothing to say he's not doing that now? A substantial  
8 sentence is necessary to incapacitate him, to deter him, to  
9 deter others from following in his footprints. And that is  
10 what the support is for the government's sentencing  
11 recommendation.

12                   THE COURT: Thank you.

13                   Mr. Carney?

14                   MR. CARNEY: Thank you, your Honor.

15                   Before I begin identifying five factors that I think  
16 the Court should give the highest consideration to, I'd like to  
17 comment on the government's oral argument and its sentencing  
18 memorandum. It's clear from what Mr. Chakravarty has written  
19 and what he said that the prosecutor wants the defendant not  
20 just to be punished for the conduct that he did underlying the  
21 criminal charges, but suggests explicitly that he should be  
22 punished because of statements that he made which are protected  
23 by the First Amendment, be punished for the fact that he went  
24 to trial, and be punished for the fact that he decided not to  
25 become an informant against the Muslim community.

1                   The overwhelming amount of evidence in this trial  
2 consisted of speech. It consisted of Tarek translating  
3 documents that are freely available and legal to read on the  
4 internet and you're able to read if you speak Arabic. The  
5 government wants to prohibit someone from translating the  
6 Arabic to English and, therefore, prohibit American citizens  
7 from being able to read what other people say whose points of  
8 view are different than ours. That is an attack on the First  
9 Amendment.

10                 Showing other people videos that are available on  
11 YouTube and undeniably legal to look at should not be part of  
12 punishment for a crime. Expressing support for Muslims that  
13 are resisting an invading army is something that President  
14 Reagan himself prays, because that army was the Soviet Union.  
15 It should not then become a prosecution just because it is a  
16 different army that invaded a Muslim country.

17                 This case has gone farther than any other case in the  
18 Department of Justice in terms of basing a prosecution on  
19 speech. The U.S. Supreme Court had some prescient words in  
20 *Holder versus Humanitarian Law Project*. They upheld the  
21 material support statute when the plaintiffs in that case  
22 explicitly acknowledged that they wanted to provide training  
23 and services to a terrorist group. And the court said, "That  
24 prohibition is clear." The court went on to say, "All this is  
25 not to say that any future applications of the material support

1 statute to speech or advocacy will survive First Amendment  
2 scrutiny; in particular, we in no way suggest that a regulation  
3 of independent speech would pass constitutional muster even if  
4 the government were to show that such speech benefits foreign  
5 terrorist organizations."

6 This trial presented that important constitutional  
7 issue at almost every turn, and yet the prosecutor wants to  
8 punish the defendant because of his exercise of that free  
9 speech. His father, still sitting in the courtroom as he had  
10 every day during the trial, told me that he sometimes would  
11 have talks with his son about whether Tarek should be so bold  
12 in his public statements. The father's background was of Egypt  
13 where such speech was draconianly punished. Tarek's response  
14 is interesting. He would say, "It's okay, Dad. We're in  
15 America."

16 And it is an affront to our Constitution that the  
17 prosecutor suggests, quite explicitly in its memo, that Tarek  
18 should be punished for going to trial because his defense was  
19 frivolous. He believed that his statements and conduct  
20 regarding speech were protected by the Constitution. It's not  
21 an issue that will be settled today, but it's an affront to say  
22 he should be punished because he did so.

23 The prosecution, in its memo and again today, states  
24 that Tarek should be punished because he refused to become an  
25 informant against the Muslim community. He refused to

1 cooperate. Is this the ultimate message that the United States  
2 is trying to send from this case? It's instructive to look at  
3 how they've treated Kareem Abu Zahra, a coconspirator and a  
4 witness for the United States, rather. He was four years older  
5 than Tarek. It was his idea for a shopping mall attack, one  
6 that the government's evidence showed Tarek opposed and  
7 convinced Daniel Maldonado that it would be wrong because of  
8 the Islamic tenet of Aman. It was Abu Zahra who went to New  
9 Hampshire to try to get automatic weapons. It was Abu Zahra  
10 who had familiarity with Hanscom Air Force Base and proposed an  
11 attack there, once again opposed by Tarek. It was Abu Zahra  
12 who talked about harm against John Ashcroft or Condoleezza Rice  
13 when Tarek was not even present.

14 Abu Zahra enthusiastically embraced going to Iraq. He  
15 paid Jason Pippin \$5,000 to give Abu Zahra a contact in Yemen.  
16 He paid for Tarek's ticket. And if Abu Zahra had not paid for  
17 Tarek's ticket, Tarek never could have gone on this adventure,  
18 as he viewed it. And upon his return, Abu Zahra was fully  
19 interviewed by the FBI and told a completely fanciful story to  
20 them; in other words, making repeated false statements.

21 He did so much worse than Tarek Mehanna. But because  
22 he cooperated, he wasn't even charged with a misdemeanor. I  
23 say this because it suggests that the message of this  
24 prosecution, in the government's eyes, is that you will be  
25 punished if you don't become an informant against the Muslim

1 community. And because he didn't become an informant, the  
2 government says he's now one of the most dangerous people in  
3 America? The government's audacity in how it treated Kareem  
4 Abu Zahra compared to Tarek Mehanna is breathtaking in its  
5 hypocrisy.

6 Let me turn to the factors that I think are most  
7 important for your Honor to consider. First is Tarek's age at  
8 the time of the relevant offense. Tarek was a teenager when  
9 the conspiracy began. He was influenced by the fact that he  
10 was developing a greater interest and admiration for his  
11 religion and his heritage. He was 21 years old when he went to  
12 Yemen.

13 In *Roper versus Simmons* the U.S. Supreme Court held  
14 that life imprisonment is unconstitutional for juveniles in  
15 non-homicide cases. The court's decision is helpful in making  
16 your sentencing decision, your Honor. I'll quote from the  
17 opinion. "Recent studies of the brain conclude that its  
18 development may not be complete until the age of 25." The  
19 justices further wrote, "As any parent knows, and as scientific  
20 and sociological studies confirm, a lack of maturity and an  
21 undeveloped sense of responsibility are found in youth more  
22 often than in adults and are more understandable among the  
23 young. These qualities often result in impetuous and  
24 ill-considered actions and decisions." They are talking about  
25 someone 25; Tarek was 21.

1                   In addition, Tarek led a sheltered life by American  
2 standards. He was living at home with his parents throughout  
3 the eight years he attended college, until he received his  
4 Ph.D. He never once drank alcohol; he never did drugs; never  
5 went out on a date because it was forbidden until he found the  
6 woman he was going to marry. His interests were classical  
7 Arabic and Islamic jurisprudence. He would spend hours upon  
8 hours reading the Qur'an and reading the Hadiths. He never  
9 traveled unless it was with his parents and his younger  
10 brother.

11                  Like most young people, life at that age is black and  
12 white; a person simply doesn't have the life experience that  
13 allows him to understand that the world is much more complex  
14 than that. Tarek was never motivated by hatred or greed. He  
15 was most affected by the suffering that he saw particularly by  
16 women and children, initially by the embargo in Iraq that  
17 included medicine and food, and then the casualties among women  
18 and children when the war began.

19                  Your Honor, I recall when I was in college, being  
20 taught by the Jesuits, that it was during the time of the  
21 troubles in Northern Ireland and all the suffering that was  
22 being experienced by Irish Catholics there. I hated the  
23 occupying British army. And I thought about leaving school and  
24 going to Ireland and joining the IRA. When you're young,  
25 things seem so black and white, especially when it's your own

1 people who are affected. I know that feeling when you're a  
2 21-year-old.

3 The evidence at trial showed unmistakably that Tarek  
4 did mature after he returned from Yemen. You know that from  
5 the five lead government witnesses who were going through the  
6 same progression as Tarek. Every single one of the witnesses  
7 acknowledged that they and Tarek grew more mature and their  
8 views moderated. Your Honor saw that from Tarek's postings on  
9 web forums which showed a more moderate presentation in  
10 substance and in tone, and, in fact, that he was objecting to  
11 virtually all of the tenets of al Qa'ida. The government  
12 didn't want to present these postings because it would  
13 undermine their view of Tarek. But it's incontrovertible that  
14 his moderation in his views that was a reflection of his  
15 maturity led him to be exiled and expelled from the Tibyan  
16 Publications web forum.

17 Is there any doubt, your Honor, that if Tarek Mehanna  
18 had gotten on that plane in 2008 that today he would be an  
19 esteemed practitioner in the foremost hospital in the Middle  
20 East, that he would be a devout Muslim, married and raising his  
21 family?

22 In addition to his age at the outset of this  
23 conspiracy, it's also important to consider what the conduct is  
24 underlying the offenses. I have appeared before your Honor  
25 since 1982. I appeared before you in the Boston Municipal

1 Court when I was a full-time public defender. I appeared  
2 before you in the superior court when I was a prosecutor. And  
3 I've appeared before you many times, sometimes on trials, many  
4 more times on pleas, in this court. I've appeared before you  
5 when guideline numbers have been very high and the defendant  
6 met the criteria of a career offender, but in my experience,  
7 what your Honor would do is look at the person's background and  
8 look at the conduct involved. If he's someone who engaged in a  
9 lifetime of crime and continued to be involved in activity that  
10 hurt people, engaged in violence, in selling drugs, whatever it  
11 might be, your Honor had no hesitation to treat him as a career  
12 offender. But if it was someone who the evidence showed was  
13 involved in activities that were different, that were perhaps  
14 to support a drug habit, I've always found your Honor would get  
15 to the heart of the case and be more concerned about the  
16 defendant's eligibility for the 500-hour drug rehabilitation  
17 program in prison rather than burying him under the courthouse  
18 as a career offender. And I urge your Honor to engage in the  
19 same analysis here.

20 Rather than focus on the inflammatory language used by  
21 the government in its memo and oral presentation, I'd ask the  
22 Court to focus on what did the defendant do, and equally  
23 important, what did he not do? He did not go to Pakistan with  
24 Abousamra when he had the chance in 2001. He went to Yemen  
25 eight years ago, in 2004, spent one week, and then came back to

1 the United States and resumed his studies, and never again went  
2 to a foreign country in the same manner.

3 He did not go with Abousamra to Iraq even though there  
4 was absolutely nothing to prevent him from doing it except that  
5 that's not what Tarek was going to do. He never sought out  
6 training camps in the times he went to Egypt when it was well  
7 known they were present in that country. Even when a close  
8 friend, Daniel Maldonado, pleaded with him to come to Somalia,  
9 Tarek rebuffed it.

10 And, your Honor, it gives some insight into Tarek's  
11 mental state when you look at the details of that phone call.  
12 Maldonado is extolling living in an Arabic country and engaging  
13 in jihad. What questions does Tarek have? "Are there any  
14 bookstores there?" he asked Maldonado. Maldonado says, "Yeah,  
15 sure, there are bookstores, I guess." "Are there women there  
16 that I could marry?" It was more important for this young man  
17 that he have an ability to continue pursuing his studies and  
18 that he could get married and begin having a family.

19 Tarek lived the principle of Aman, and  
20 Daniel Maldonado told this Court how it was Tarek who convinced  
21 him of that. You know Tarek has no prior criminal record  
22 whatsoever. In the years that he's been under the most intense  
23 confinement at a prison, he's not picked up a single  
24 disciplinary report. Not one.

25 The prosecution describes Tarek as being such a

1 dangerous man, that he's currently such a clear and present  
2 danger to the United States, and that's why this extraordinary  
3 sentence should be imposed. Well, is that how they viewed him  
4 from 2001 until the superseding indictment was returned in 2009  
5 and he was arrested for material support? They knew he went to  
6 Yemen, and the FBI questioned him about his going to Yemen.  
7 They secretly searched his home during this period from 2001  
8 until 2009. They read his email; they collected his text  
9 messages; they saved all of his postings on web forums; they  
10 wiretapped his phone; they enlisted his friends to record the  
11 conversations. They knew everything about this man. And in  
12 2008, when he was arrested for making a false statement, they  
13 withheld from this Court all of that evidence, and as a result,  
14 Tarek Mehanna was released on bail.

15 What did he do? He taught math and science in a  
16 school after he was let out on bail. It was five years after  
17 Tarek had returned from Yemen that the government got around to  
18 charging him with that offense. This is simply not the way our  
19 government treats an individual who is a clear and present  
20 danger to the United States. It's not. And they know it.  
21 That's why they were content to let him be released on bail in  
22 2008, and stay there for another nine months, because they knew  
23 better than anyone that he was not that clear and present  
24 danger.

25 The third factor is comparable cases. We presented

1 many details and reports and charts and graphs, and I'm not  
2 going to repeat it because I know your Honor has read it. The  
3 average sentence imposed in a terrorist, so-called, case is 14  
4 years. And that does not include cases where the defendant  
5 cooperated and received a 5K1 departure. It's instructive that  
6 this group of cases includes people who tried to blow up an  
7 airplane or set off a van in Times Square with explosives or  
8 pressed the detonator, thinking it was real when it had been  
9 given to him by the FBI. It included cases where defendants  
10 obtained explosives, did firearms training and sophisticated  
11 surveillance of targets. At the low end of the spectrum it  
12 includes people who talked about doing things but never became  
13 operational and never came close to hurting anyone, and those  
14 are people who received sentences in the single digits.

15 The government says the Court should not look at  
16 comparable cases. Well, the Congress, through the Sentencing  
17 Guidelines, and the Supreme Court have said repeatedly that the  
18 Court must look at comparable cases. The government's  
19 recommendation for the conduct involved in this case is  
20 unprecedented in its severity and is so far above what other  
21 district judges have imposed in comparable cases that it's no  
22 wonder that the government wants you to disregard those other  
23 cases. The data presented in our sentencing memorandum  
24 reflects what real judges in this court, in federal court, have  
25 done in real cases, and those are the cases the Court should

1 rely upon.

2                   Another factor that we've set forth in our memo  
3 concerns the conditions of confinement now and after  
4 sentencing. As your Honor is aware, there are 1,600 cells in  
5 the Plymouth Correctional Facility. Two of them are designated  
6 the super max cells, and Tarek is in one of those cells. He's  
7 incarcerated in this cage 23 hours a day, five days a week.  
8 And the other two days a week he remains in the cage for 24  
9 hours a day.

10                  Studies that we've presented in our memo show the  
11 impact that this has on a human being's mental health. And  
12 that's a factor the Court can take into account in mitigation.  
13 Similarly, the Bureau of Prisons has chosen a policy that will  
14 put people who are charged with terrorist offenses in the super  
15 max prisons where they intentionally are deprived of any  
16 contact. Indeed, while Tarek has been in Plymouth, almost the  
17 last three years, he has never had contact, human contact, been  
18 able to touch and hug his mother or father, nor is he allowed  
19 to have any interaction with other inmates; he's kept in  
20 isolation. And that's how his sentence will be carried out as  
21 well.

22                  A final factor I'd like the Court to consider is the  
23 unbelievable support Tarek Mehanna has received from the  
24 community. How many times has your Honor sat in this courtroom  
25 at a sentencing and the only people in the audience have been

1 the defendant's mother and his sister? How many times has the  
2 Court seen an outpouring of support from the community urging  
3 the Court to be merciful? These are letters that were written  
4 by loyal Americans, including the Islamic Council of New  
5 England who would never, ever provide any supportive letter for  
6 anyone that they remotely believed was a terrorist.

7 Many of these people have known Tarek for years. He's  
8 been their neighbor, he's been at the mosque with them  
9 together, he's filled their prescriptions at Walmart and CVS,  
10 and he's taught their children. Those letters attest to the  
11 fact that he has lived a good and generous and kind life,  
12 including giving away his allowance every week to people who  
13 needed it more than he, distributing food from his home to  
14 people who were hungry. This is the character of the man who  
15 is before you. The letters were at times highly eloquent; they  
16 were always sincere. And many people said they rested their  
17 faith in the criminal justice system on what is going to be the  
18 outcome of this proceeding.

19 If Ahmed Mehanna had been permitted to testify, he  
20 would tell you that he rode to school with his son for the  
21 entire eight years, and above all, his son was affected by the  
22 suffering he saw of innocent people in Iraq. And he would also  
23 tell you that no man in Ahmed's family has lived as long as he  
24 has and that he is afraid that he will never again be able to  
25 hug or kiss his son if your Honor imposes a sentence remotely

1 like what the government is asking for.

2 Souad would tell you anecdotes about how Tarek has  
3 been so kind and so generous to even strangers since he's been  
4 a young boy; he always thought of others instead of himself.  
5 She would tell you how she cries every single day and night for  
6 her son whom she has not hugged or even touched in almost three  
7 years, and that her pain as a mother is unbearable.

8 As a father I look at my children who are in their  
9 twenties. My wife and I have tried to instill good values,  
10 good morals as a foundation of a good life. And we hope we've  
11 succeeded. We also are aware that young kids sometimes do  
12 things that are real concerning, and a parent cannot unring  
13 that bell. But as a parent we just pray that they don't do  
14 something that will lead to the destruction of their life. And  
15 if they do ever appear before the judge, we hope that these are  
16 the factors that will be taken into account and that mercy will  
17 be one of the ingredients in a just sentence.

18 Your Honor, I'm going to end by paraphrasing the words  
19 of a man who may have had the greatest insight into the human  
20 condition of any human being that's ever lived on this planet.  
21 That man is William Shakespeare. And his character is in the  
22 "Merchant of Venice" describing the effect when the king shows  
23 mercy. The words apply equally to a judge, and I will adapt  
24 those words to this setting. I won't pretend to read it from  
25 memory.

1                   "The quality of mercy is not strain'd. It droppeth as  
2 the gentle rain from heaven upon the place beneath. It is  
3 twice blest: It blesseth him that gives and him that takes.  
4 Tis mightiest in the mightiest; it becomes the throned judge  
5 better than his gavel. His sentencing ability shows the force  
6 of temporal power. The attribute to awe and majesty, wherein  
7 doth sit the dread and fear of judges. But mercy is above this  
8 sentencing power. It is enthroned in the hearts of judges; it  
9 is an attribute to God himself; and earthly power of judges  
10 doth then shall like God's when mercy seasons justice."

11                   Thank you very much, your Honor.

12                   THE COURT: All right.

13                   MR. CARNEY: Your Honor, before we conclude  
14 sentencing, I'd ask the Court to permit my client to allocute.

15                   THE COURT: Of course. Mr. Mehanna?

16                   THE DEFENDANT: I appreciate your giving me the chance  
17 to speak.

18                   It was four years ago this month that I was finishing  
19 a work shift at a local hospital. And as I was walking out to  
20 my car, two federal agents approached me and they said that I  
21 had a choice to make. They said that I could do things the  
22 easy way or I could do them the hard way. The easy way, as  
23 they explained, was that I would become an informant for the  
24 government. And if I did so, I would never have to see the  
25 inside of a courtroom or a prison cell. The hard way is what

1 you see before you. Here I am, having spent the majority of  
2 the four years since that day in a solitary cell the size of a  
3 small closet in which I'm locked down for 23 hours a day,  
4 living with rapists and murderers and home invaders and child  
5 molesters.

6 The FBI and these prosecutors worked very hard, and  
7 the government spent millions of tax dollars to put me in that  
8 cell, to keep me there, to put me on trial, and finally, to  
9 have me stand here before you today to be sentenced to even  
10 more time in a cell.

11 In the weeks leading up to this moment, many people  
12 have given me their suggestions as to what it is I should say  
13 to you. Some suggested that I should plead for mercy in hopes  
14 of a light sentence. Others suggested that I'm going to be hit  
15 hard either way. What I want to do for the next couple of  
16 minutes is simply to talk about myself.

17 When I refused to become an informant the government  
18 responded by charging me with the crime of supporting the  
19 Mujahidin, fighting the occupation of Muslim countries around  
20 the world, or as they like to call them, the terrorists. But I  
21 wasn't born in any Muslim country; I was born and raised right  
22 here in America. And it's something that angers many people,  
23 that I could be an American and believe the things that I  
24 believe and say the things that I say and take the positions  
25 that I take. But everything that a man is exposed to in his

1 environment is like an ingredient which shapes his outlook and  
2 shapes his life in one way or another. And I'm no different.  
3 So in more ways than one, it's because of America that I am who  
4 I am.

5 When I was six years old I began amassing a collection  
6 of comic books. Batman implanted a concept in my mind,  
7 introduced me to a paradigm as to how the world is set up:  
8 that there are oppressors, there are the oppressed, and there  
9 are those who step up to defend the oppressed. And that  
10 resonated with me so much that throughout the rest of my  
11 childhood I gravitated towards any book I could find that  
12 reflected this concept. So my favorites were *Uncle Tom's*  
13 *Cabin*, the *Autobiography of Malcolm X* and so forth. And I even  
14 found an ethical dimension to the *Catcher in the Rye*.

15 By the time I got to high school and began taking  
16 serious history classes, I started to learn just how real this  
17 paradyne was in the world, and still is. So I learned in high  
18 school as a student in the classroom about the native Americans  
19 and what befell them at the hands of Columbus and the European  
20 settlers who came after him. I learned about how the  
21 descendants of those European settlers were, in turn, oppressed  
22 under the tyranny of King George III. I read about people like  
23 Paul Revere and Tom Paine and about how Americans began an  
24 insurgency against British forces, an insurgency that we now  
25 celebrate as the American Revolutionary War. And, in fact, as

1 a kid I went on school field trips to visit the most famous  
2 battlefields of that war, some just a few blocks from this  
3 courthouse. I learned about Harriet Tubman, Nat Turner, John  
4 Brown, and the fight against slavery in this country. I  
5 learned about Emma Goldman and Eugene Debs and the struggles of  
6 the labor unions and the poor and working class. I learned  
7 about Anne Frank and the Nazis and how they persecuted  
8 minorities and imprisoned dissidents. I learned about Rosa  
9 Parks, Malcolm X, Martin Luther King and the Civil Rights  
10 struggle. And I learned about Ho Chi Minh, and how the  
11 Vietnamese fought for decades to liberate themselves from one  
12 invader after another. I learned about Nelson Mandela in the  
13 fight against apartheid in South Africa.

14 Everything I learned in those years confirmed that  
15 parodyne that I was introduced to when I was six: that  
16 throughout history, there has been a constant struggle between  
17 the oppressed and their oppressors. And with every struggle  
18 that I learned about, I found myself consistently siding with  
19 the oppressed and consistently admiring and respecting those  
20 who stepped up to defend them regardless of nationality,  
21 regardless of religion. And I never threw my class notes away.  
22 As I stand here speaking, they are piled very neatly in my  
23 bedroom closet at home.

24 From these personalities and names and figures in  
25 history that I learned about, one stood out for me above the

1 rest. I was impressed by Malcolm X in many ways, but above  
2 everything, I was fascinated by the concept of  
3 transformation -- of his transformation. If you've ever seen  
4 the movie "X" by Spike Lee, it's over three and a half hours  
5 long, and the Malcolm at the beginning of the movie is very  
6 different from the Malcolm at the end. At the beginning, he  
7 begins a life -- he begins his life as an illiterate criminal,  
8 but he ends it as a husband, as a father, as an eloquent and  
9 protective leader of his people, as a disciplined Muslim  
10 performing the Hajj in Mecca, and finally, as a martyr. The  
11 life of Malcolm X taught me that Islam was not simply something  
12 one is born with or inherits. It's not a culture. It's not an  
13 ethnicity. It's a way of life. It's a state of mind that  
14 anyone can choose regardless of where they're born, regardless  
15 of how they were brought up.

16 And this led me to look deeper into Islam, and I was  
17 hooked. I was a teenager back then, but Islam had the answer  
18 to the biggest questions that I was asking myself, the  
19 questions that the greatest scientific minds had been unable to  
20 answer, the questions that the rich and famous were sometimes  
21 driven to depression and suicide from being unable to answer:  
22 Why do we exist? What's the purpose of life? What's the  
23 purpose of our presence in the universe?

24 So Islam had all of these answers prepared for me.

25 Not only that, but it had the answer of exactly how we are

1 supposed to exist. And because there's no hierarchy, because  
2 there's no priesthood in Islam, I was able, on my own, to  
3 immediately and directly dig into the Qur'an and the teachings  
4 of the Prophet Muhammad, sallallahu alayhi wasallam, and begin  
5 this journey of learning what this was all about, of the  
6 implications of Islam for me as a human being, as an  
7 individual, on the people around me, on society, and on the  
8 world as a whole. And the more I learned, the more I began to  
9 value Islam and cherish it like a piece of gold, like my own  
10 personal treasure. This was back when I was a teenager, but  
11 even today and despite the pressures of the last few years, I  
12 stand here before you and before everyone in this courtroom as  
13 a very proud Muslim.

14 With that, I began to look at what was happening to  
15 Muslims in different parts of the world. And everywhere I  
16 looked, I saw the powers that be trying to destroy what I  
17 loved. I learned about what the Soviets had done to the  
18 Muslims of Afghanistan. I learned what the Serbs had done to  
19 the Muslims of Bosnia. I learned what the Russians were doing  
20 to the Muslims of Chechnya. I learned what Israel had done in  
21 Lebanon, and what it continues to do in Palestine until today  
22 with the full backing of the United States. And I learned what  
23 America itself was doing to Muslims. I learned about the  
24 Persian Gulf War and the depleted uranium bombs that were  
25 dropped all over Iraq that killed thousands of people

1 immediately and caused cancer rates to skyrocket around that  
2 country. As Jay mentioned, I learned about the American-led  
3 sanctions on Iraq, that according to the United Nations itself  
4 resulted in the deaths of over half a million children under  
5 the age of five because they made it illegal for food and  
6 medicine and medical equipment to be imported into the country.

7 I saw an interview of Madeleine Albright on "60  
8 Minutes" where she was directly asked about these half a  
9 million children who had perished. And her response, she  
10 expressed her belief very clearly that these half a million  
11 children were, quote, "worth it." I then watched on September  
12 11th, 2001, as a group of people felt so driven and so outraged  
13 by the deaths of these children that they hijacked airplanes  
14 and flew them into buildings. I then watched as America  
15 attacked and invaded Iraq directly in 2003. I saw the effects  
16 of shock and awe in the opening days of the invasion. I saw  
17 footage of children, of babies in hospital wards with shrapnel  
18 from American missiles sticking out of their foreheads. And,  
19 of course, none of these were shown on CNN.

20 I learned about the town of Haditha, where 24 Muslims,  
21 including a 76-year-old man in a wheelchair, women and even  
22 toddlers were shot up and blown up in their night clothes as  
23 they slept by U.S. Marines. I learned about Abeer al-Janbi, a  
24 14-year-old Iraqi girl who was gang-raped by five American  
25 soldiers who then shot her and her parents in the head and set

1 fire to their corpses.

2                   This is a picture of that girl. And as you can see,  
3 Muslim women do not even show their hair to unrelated men. And  
4 I ask you to just imagine for a moment a 14-year-old girl from  
5 a conservative village in the middle of Iraq who has never  
6 encountered a foreigner in her life having her dress torn off  
7 of her body and being sexually assaulted by not one, not two,  
8 not three, not four, but five American soldiers. Just imagine  
9 that for a second.

10                  The government always talks about how angry I am and  
11 they're holding it against me as a crime. How can anyone not  
12 be angry when they hear a story like this? And even today as I  
13 sit in my jail cell, I read in the papers about the drone  
14 attacks that continue to kill Muslims in Pakistan, in Somalia,  
15 in Yemen every other day. Just last month we heard about the  
16 17 Afghan Muslims, mostly mothers with their kids, who were  
17 shot to death by an American soldier who then also set fire to  
18 their corpses. And these are just snapshots. These are just the  
19 the stories that make it to the headlines. These are just the  
20 tip of the iceberg.

21                  But my point is that one of the first concepts that I  
22 learned in Islam was the concept of loyalty, the concept of  
23 brotherhood, that every Muslim woman in the world is my sister  
24 and every Muslim man in the world is my brother, and together  
25 we are one large body who must protect each another. In other

1 words, there was no way that I could be witnessing these things  
2 being done to my brothers and sisters around the world,  
3 including by the United States of America, and remain neutral.  
4 My sympathy for the oppressed continued, but it now became more  
5 personal, as did my admiration for those who stepped up to  
6 defend them.

7 I mentioned Paul Revere. When Paul Revere jumped on a  
8 horse and took his midnight ride, it was for the purpose of  
9 warning the people that the British were going to march to  
10 Lexington to arrest Sam Adams and John Hancock, and then on to  
11 Concord to confiscate the weapons that were stored there by the  
12 Minutemen. By the time the British got to Concord, they found  
13 the Minutemen waiting for them. Weapons in hand, the Minutemen  
14 shot at the British, they engaged them in battle, and they beat  
15 them. And from that battle came the American Revolution.

16 There's a word in Arabic which describes what those  
17 Minutemen did that day, and that word was mentioned many times  
18 in this courtroom: jihad. And this is what my trial was  
19 about. This is what all those videos and all those  
20 translations and all this childish bickering over, "Oh, look,  
21 he translated this paragraph and he edited this sentence." And  
22 all these exhibits, this is what it all revolved around, this  
23 single issue: Muslims defending themselves against American  
24 soldiers, doing to them exactly what the British did to  
25 America.

1           It was made 100 percent crystal clear at trial that I  
2 never, ever plotted to kill Americans at shopping malls or  
3 anywhere else. The government's own witnesses contradicted  
4 their accusation. We brought expert after expert and put them  
5 up on that stand for hours to dissect my every written word to  
6 clarify my beliefs on that matter. Furthermore, when I was  
7 free, the government themselves sent an undercover agent to try  
8 to ensnare me in one of their little fake terror plots, and I  
9 refused to participate in that. But mysteriously, the jury  
10 never heard about that.

11           So this trial was not about my position on Muslims  
12 killing American civilians; this trial was about my position on  
13 Americans killing Muslim civilians. And that position is very  
14 simple: that Muslims should defend themselves from foreign  
15 invaders, whether those invaders are Soviets or Americans or  
16 martians. This is not terrorism and it's not extremism; it's  
17 the simple logic of self-defense. And it's what the arrows in  
18 that seal above your head represent: defense of the homeland.

19           If someone breaks into your home to try to rob you and  
20 to try to harm you and your family, logic dictates that you  
21 would do whatever it takes to expel that invader from your  
22 home. But when that home is a Muslim land and that invader is  
23 the U.S. military, for some reason the standards suddenly  
24 change and common sense is renamed "terrorism," and those  
25 people fighting to defend themselves and their families and

1       their honor become the terrorists. And even though they're  
2       defending themselves from people who cross the ocean to come  
3       and kill them, they're accused of killing Americans.

4               The mentality that America itself was victimized by  
5       when British soldiers walked these streets two and a half  
6       centuries ago is the same mentality that Muslims are being  
7       victimized as American soldiers walk their streets today, and  
8       it is the mentality of colonialism.

9               Last month when those 17 Afghans were killed, I  
10       followed the debate in the media. I followed the discussion.  
11       And what I noticed was that people were focusing entirely on  
12       the soldier: on his life, on his stresses, on his PTSD, on the  
13       mortgage on his home, as if he was the victim. Nobody said  
14       anything about the people that he actually killed, as if  
15       they're not even real, as if they're not people. And  
16       unfortunately, this mentality trickles down to everyone in  
17       society, whether they realize it or not. Even with my own  
18       lawyers, it took two years of weekly meetings and discussions  
19       and explaining and clarifying and trying to simplify my  
20       logic -- two years before they were finally able to think  
21       outside the box and at least ostensibly accept the logic in  
22       what I was saying. Two years. And if it took this long for  
23       people so intelligent, whose job it was to defend me, people so  
24       dedicated, then to throw me in front of a jury -- a randomly  
25       selected jury -- under the premise that they are my impartial

1 peers, I mean, come on. I wasn't tried before a jury of my  
2 peers because with the mentality in America today, I don't have  
3 any peers. And counting on this fact, the government  
4 prosecuted me not because they needed to, but simply because  
5 they could.

6 One last thing I learned in history class is this:  
7 America has historically supported some of the most unjust  
8 policies against its minorities, even protecting those policies  
9 with the law, only to come decades later and look back and say,  
10 "What were we thinking?" We can look at slavery; we can look  
11 at Jim Crow; we can look at the interment of Japanese during  
12 World War II. Each of these policies during their respective  
13 times was widely accepted in society. And, in fact, each was  
14 also defended by the Supreme Court. But as time passed and the  
15 world changed, both people and the courts reversed course and  
16 looked back and said, "What were we thinking?"

17 Nelson Mandela was considered a terrorist by the  
18 government of South Africa and was given a life sentence. But  
19 as time passed and the world changed, South Africa shook off  
20 its prevalent mentality, they realized just how oppressive  
21 their policies were and that it was not he who was the  
22 terrorist, and they released him from prison and he even became  
23 president. So everything is subjective. Even this business of  
24 terrorism and who is and isn't a terrorist. One day the  
25 Mujahideen fighting an invader are freedom fighters; the next

1 day those same exact Mujahideen fighting a different invader on  
2 the same land become terrorists. So it all depends on the time  
3 and the place and who the super power in the world happens to  
4 be at the moment.

5 In your eyes I'm a terrorist, and it's perfectly  
6 logical and reasonable and acceptable that I be standing here,  
7 the only one in this room in a bright orange prison jumpsuit.  
8 This is perfectly acceptable to you and many people in this  
9 country. But history repeats itself. One day America will  
10 change and people will look back and they will recognize this  
11 day for what it is. They're going to look back at how hundreds  
12 of thousands of Muslims were killed and maimed by the U.S.  
13 military in foreign countries, yet somehow I'm the one standing  
14 here about to go to prison for conspiring to kill and maim in  
15 those same countries because I support the Mujahidin who are  
16 defending those people.

17 The government spent millions of dollars to imprison  
18 me as a so-called terrorist, but if we were to bring this girl  
19 back to life at the moment that she was being raped by your  
20 soldiers and put her on that stand and ask her who she thinks  
21 the terrorists are, she sure as hell wouldn't be looking at me.

22 The government repeatedly says that I obsessed over  
23 violence and I obsessed over killing Americans, but there is no  
24 lie more ironic that I have ever heard.

25 MR. CHAKRAVARTY: For the record, I wanted to put a

1 couple of things on the record. First, what the defendant just  
2 said about having been approached by the FBI on multiple  
3 occasions and his characterizations are categorically false.  
4 I'll let your Honor --

5 THE DEFENDANT: You're a liar. Sit down. You're a  
6 liar. You're a liar.

7 MR. CHAKRAVARTY: I'll let your Honor assess his  
8 contrition.

9 THE DEFENDANT: You're a liar. Sit down.

10 MR. CHAKRAVARTY: Mr. Mehanna, why don't you tell us  
11 who these people are who were attempting to --

12 THE COURT: Mr. Chakravarty.

13 MR. CHAKRAVARTY: Sorry, your Honor. But to highlight  
14 the position, he still possesses information that he is trying  
15 to reinvent his own story --

16 MS. BASSIL: I object, your Honor.

17 MR. CARNEY: I object too.

18 MR. CHAKRAVARTY: -- about this.

19 MR. CARNEY: This is not the forum for this.

20 THE COURT: All right. I agree with that. We'll take  
21 a 15-minute recess and return.

22 THE CLERK: All rise for the Court. The Court will  
23 take a 15-minute recess.

24 (The Court exits the courtroom and there is a recess  
25 in the proceedings at 11:55 a.m.)

1                   THE CLERK: All rise.

2                   (After the recess, the Court enters the courtroom at  
3 12:20 p.m.)

4                   THE CLERK: For a continuation of the sentencing  
5 hearing. Please be seated.

6                   THE COURT: The sentencing statute, Section 3553(a) of  
7 Title 18, sets forth a number of specific categorical factors  
8 to be considered by a court in devising an appropriate  
9 sentence. The weight given to any particular factor varies  
10 from case to case based on the particular facts and context of  
11 the case at hand. It is not uncommon that the factors  
12 sometimes might point in different directions, and it is an  
13 accommodation, or the balance of the several factors, that  
14 ultimately should support the judgment that is made. So let me  
15 address the factors in some detail.

16                  Two of the factors are the nature and circumstances of  
17 the offense and the need to provide for just punishment of that  
18 offense. The defendant was convicted after trial of providing  
19 and attempting and conspiring to provide material support to  
20 al Qa'ida, support that he intended to have the effect of  
21 advancing al Qa'ida's murderous operations in Iraq and  
22 elsewhere. He was convicted of conspiring with others to join  
23 in training camps in the hope of actually engaging in fighting  
24 himself. He was also convicted of conspiring with others both  
25 in person and through the internet to perform services,

1 including translation and dissemination services, in support of  
2 al Qa'ida. The proof came some through witnesses, but much of  
3 it consisted of the defendant's own words in chats and emails  
4 and recordings.

5 The trip to Yemen for the defendant in the end proved  
6 to be a more or less feckless attempt, though it was no less a  
7 serious attempt for its failure. It was an attempt, the result  
8 of a conspiracy, to join in an armed struggle against American  
9 forces and American nationals. It is long settled in our law  
10 that conspiracy and attempt are punishable by substantial  
11 penalties even in the event of their failure to succeed.

12 Later the defendant found a more suitable and  
13 congenial role: He could provide material support to al Qa'ida  
14 by proselytizing and translating, knowingly and intentionally,  
15 according to the evidence, aiding the media wing of al Qa'ida,  
16 As-Sahab, and others in promoting violent jihad and recruiting  
17 young Muslim men of the English-speaking West to active  
18 participation in that jihad. He was effective in those efforts  
19 both at a micro and at a macro level.

20 At the micro level he was a charismatic leader, as I  
21 think we have seen this morning, of a small group of  
22 Massachusetts men who, with him, were drawn into radical  
23 Salafist jihadi theology and ideology, such as Massoud,  
24 Abu Bakr, Maldonado, Spaulding, Abu Zahra, and even Abousamra.  
25 Among other things, including his strong and magnetic

1       personality and his native intelligence, the defendant's  
2       serious religious scholarship made him a kind of leader in that  
3       group, and they looked to him for leadership and guidance, and  
4       he encouraged them to radical action.

5               At the macro level he was a respected voice in web  
6       forums, chat rooms, one-on-one messaging. He was an active  
7       participant in the radical at-Tibyan forum and was, from the  
8       evidence at trial, including posts from that forum -- he was  
9       accorded a degree of respect from the other participants.

10              It is true he eventually was "kicked off," I think as  
11       Mr. Carney put it at trial, the forum because his views were  
12       not as extreme as others, but extremity is a relative term, and  
13       it would be hard to characterize the defendant's views as  
14       moderate simply because they weren't at the outer edge of  
15       extremity. The debate was -- or at least the one that was  
16       highlighted at trial -- was exactly who it was permitted to  
17       kill in the execution of jihad. And the defendant expressed  
18       concern about violence to those whom he regarded as truly  
19       innocent, but it was also plain that he had no qualms about the  
20       killing by explosive device or by beheading of persons whom he  
21       regarded as supporting U.S. military action in Muslim  
22       countries, including non-military personnel who were in  
23       support.

24              He translated important propaganda works including, of  
25       course, the "39 Ways" and the "Expedition of Umar Hadeed,"

1 which celebrated and encouraged suicide bombers, and as a  
2 consequence he was sought out on occasion by al Qa'ida in Iraq  
3 as a translator for other works, including one by as important  
4 a figure as Ayman al-Zawahiri. That he was sought out in this  
5 way, even though in that instance he did not undertake the  
6 work, showed that at least some in al Qa'ida valued the support  
7 that he was able to give.

8 It was possible, even appropriate, a few months ago to  
9 wonder whether the defendant could be guilty of the crimes he  
10 was charged with, but the jury has answered that question, and  
11 that verdict necessarily implies the rejection of the  
12 defendant's argument made at trial that his activity was  
13 limited to protected speech or independent advocacy. To think  
14 otherwise, one would have to disregard a great deal of the  
15 actual trial evidence. So that's a summary of the criminal  
16 acts that support the verdicts in the case, and those acts  
17 warrant a substantial criminal sanction as a penalty.

18 Another factor in the statute is the need to promote  
19 respect for the law. This is a consideration that looks in two  
20 directions. On the one hand, the sentence must be one that  
21 satisfies the wider community that the law has been vindicated  
22 by the sentence imposed; that is, that the punishment fits the  
23 crime and is imposed in an appropriate and proportionate way to  
24 the seriousness of the offense. This satisfies the community's  
25 legitimate interest in a retributive punishment.

1                   On the other hand, the sentence must also promote  
2 respect for the law in the sense that it serves as a warning to  
3 those who might be tempted to commit similar offenses, that  
4 their criminal acts will be punished appropriately as well.  
5 And this serves as an instrument of deterrence of future  
6 criminal conduct. Both of these interests are also significant  
7 in this case.

8                   Another factor in the statute is the history and  
9 characteristics of the defendant. This can often be a  
10 confounding factor. In many ways, many genuine ways, the  
11 defendant has behaved as an exemplary citizen, as the many  
12 letters submitted in his support attest. I credit the facts  
13 and opinions expressed in those letters, as far as they go.  
14 Even the evidence in the case showed the defendant to be an  
15 intensely serious young man interested sincerely in how he  
16 should form his life and conduct to please God and to exemplify  
17 Islamic life properly lived. That itself is noble and  
18 praiseworthy.

19                   He became, however, consumed with a religious  
20 enthusiasm that was at once partly admirable and partly  
21 horrifying. And as to the events at issue in this case, the  
22 horrifying part came to dominance and it led him to willful  
23 participation in the conspiracies and attempts, of which he  
24 stands convicted.

25                   Many of the letter-writers have noted how difficult it

1 is for them to believe that the Tarek Mehanna that they knew  
2 could simultaneously be the Tarek Mehanna described in the  
3 indictment and, it must be said, substantiated in the trial  
4 evidence.

5 The sad fact is that it is not an uncommon phenomenon.  
6 One might call it the Jekyll-and-Hyde phenomenon. It is a  
7 reality of human nature that we all have capacities for both  
8 good and evil, and we all do acts both good and evil in various  
9 proportions in the course of our lives. And the good and evil  
10 impulses and acts sometimes occur simultaneously with each  
11 other. In sentencing we see this phenomenon, as I say,  
12 commonly. You might be surprised how frequently people  
13 convicted of serious crimes are shown to have lived, in other  
14 respects, lives of probity and charity. Just as two wrongs  
15 don't make a right, two rights don't excuse a wrong, and the  
16 wrong still must be punished. Still, the punishment must be  
17 appropriate specifically to this defendant and it should take  
18 account of who he is, fully considered.

19 A related consideration mandated by the statute is the  
20 need to protect the public from future crimes by the defendant.  
21 One object of criminal punishment is simply to incapacitate a  
22 defendant from committing another offense by reason of  
23 incarceration. That is typically an immediate or near-term  
24 objective effective during the term of incarceration. Another  
25 object of punishment for the longer term is to deter the

1 punished defendant from repeating his offense. This could  
2 occur by effecting a change of heart or by inducing a practical  
3 and self-interested calculation. In either event, the sentence  
4 should be sufficient to promote, optimally bring about, a  
5 commitment in the defendant not to reoffend. Both  
6 considerations apply here.

7 I am, frankly, concerned by the defendant's apparent  
8 absence of remorse notwithstanding the jury verdict. His  
9 position in this respect has, as I think we have seen this  
10 morning, a quality of defiance. As a consequence, this factor  
11 has significant prominence in the overall assessment of an  
12 appropriate punishment.

13 Two other related and important statutory factors  
14 affecting sentencing are the advice of the Sentencing  
15 Guidelines and the need of a sentence to avoid creating  
16 unwarranted disparities with other similarly situated cases.  
17 The statute requires the Court to consider the advice that  
18 emerges from the Sentencing Guidelines as to appropriate  
19 sentencing ranges, and it requires the Court to consider the  
20 need to avoid unwarranted disparity for similarly situated  
21 defendants.

22 These two requirements work in harmony. A principal  
23 purpose of the Guidelines has always been to provide judges  
24 with a common rubric and framework for deciding on an  
25 appropriate sentence, and by that commonality to try to reduce

1 disparity in judgments from one judge to another and one  
2 defendant to another. And in general terms, adhering to  
3 Guidelines recommendations tends to have that effect.  
4 Nevertheless, the Guidelines are advisory, not mandatory, and a  
5 sentencing judge is ultimately responsible for imposing a just  
6 sentence in the particular case at hand, and that ultimate goal  
7 is not to yield to an uncritical adherence to the Guidelines'  
8 recommendation.

9 Some Guidelines provisions, such as the drug offense  
10 Guidelines, are frequently consulted. And as a result, there  
11 is a large body of decisions involving their application.  
12 Where there has been such wide experience with guideline  
13 provisions, there is an opportunity to assess how well those  
14 provisions serve all the relevant sentencing factors, including  
15 the reduction of disparity in sentencing. And as has recently  
16 occurred with the drug Guidelines, that experience can lead to  
17 a revision of the Guidelines to improve the match between their  
18 intention and their effect. The Guidelines at issue in this  
19 case have not had a similar frequency of application and,  
20 consequently, our collective experience with them is much more  
21 limited.

22 At least from the perspective of this case to which my  
23 attention has been directed, I do not think the Guidelines  
24 applied in accordance with their terms do an adequately  
25 reliable job in balancing the relevant sentencing factor for

1 several reasons: First, the terrorism adjustments that we  
2 referred to when we set the Guidelines range operate in a way  
3 that is too general to be convincingly reliable in a given  
4 case. Both the 12-level adjustment to the offense level and  
5 the automatic assignment of a Criminal History Category VI  
6 which are applied in any case that can be fairly characterized  
7 as a terrorism case, regardless of the particular facts, not  
8 only make the recommendation unuseful as a guide in a  
9 particular case but is actually, in my view, contrary to and  
10 subversive of the mission of the Guidelines which is to address  
11 with some particularity the unique facts of the given case.  
12 And gross adjustments such as the ones I've referenced do not  
13 do that.

14 Moreover, the automatic assignment of a defendant to a  
15 Criminal History Category VI is not only too blunt an  
16 instrument to have genuine analytical value, it is  
17 fundamentally at odds with the design of the Guidelines. It  
18 can, as it does in this case, import a fiction into the  
19 calculus. It would impute to a defendant who has had no  
20 criminal history a fictional history of the highest level of  
21 seriousness. It's one thing to adjust the offense level upward  
22 to signify the seriousness of the offense. It is entirely  
23 another to say that a defendant has a history of criminal  
24 activity that he does not, in fact, have.

25 Contrast this situation with the career offender

1 guideline which makes a somewhat similar adjustment. But in  
2 that instance the Guidelines make an adjustment to a  
3 defendant's criminal history score precisely because he has a  
4 certain criminal history. The adjustment to criminal history  
5 called for by Section 3A1.4(b) is, I believe, simply a way of  
6 "cooking the books" to get to a score and a desired sentencing  
7 range, at least as it is applied in the context of this case.  
8 So I find the Guidelines literally taken, because of those  
9 problems and perhaps a few others, not to be reliable advice.

10 Another way of assessing the usefulness of Guidelines  
11 advice is to look at how they have been actually applied, a  
12 kind of judicial biofeedback. A survey of cases involving  
13 convictions under the same statutes that are involved in this  
14 case indicates that courts have frequently varied downward by  
15 significant degrees from the range recommended by these  
16 Guidelines.

17 I asked our probation officer to obtain some  
18 statistical data from the Sentencing Commission regarding  
19 recent sentences under Sections 2339A and 2339B and 956, the  
20 key statutes involved here. The data she obtained is for  
21 fiscal years 2009 through 2011. It is a small sample and may  
22 not be statistically reliable. I don't use it for that purpose  
23 but for illustrative purposes.

24 In that period, that three-year period, offenders  
25 convicted under 2339B received non-government-sponsored

1 below-range sentences slightly more than half the time. For  
2 convictions under 2339A that figure rose to just above  
3 two-thirds. In cases involving both statutes there are only  
4 seven cases, and six of the seven received  
5 non-government-sponsored below-range sentences. Five offenders  
6 were convicted in that period under both 2339A and 956, and  
7 four of the five received non-government-sponsored below-range  
8 sentences.

9 As I say, these figures are, admittedly, a  
10 non-rigorous analysis, but they do suggest that judges faced  
11 with sentencing decisions in individual cases have not found  
12 the Guidelines range helpful in establishing the appropriate  
13 sentence. And, of course, in this case, even the government's  
14 recommended sentence is below the calculated guideline range  
15 and is, I guess, implicitly, a government-sponsored below-range  
16 recommendation.

17 All that said, the Guidelines at issue are not wholly  
18 without some advisory value. If the principal defects, as I've  
19 found them, are omitted from the calculation, leaving in place  
20 the respective base offense levels and more common adjustments,  
21 such as role in the offense or obstruction of justice, one can  
22 hypothesize a calculation that tends to correct for what I find  
23 to be the defects in the Guidelines as they are written and  
24 strictly applied.

25 Without going through the details, because this is a

1 hypothesis and not a strict application, leaving out the  
2 terrorist adjustment to the offense level and the postulation  
3 of a criminal history of Category VI, the offense level under  
4 Count 1 would be 30; under Counts 2 through 4, 35; and under  
5 Counts 5 through 7, 14. Under the grouping rules, which are  
6 uncontroversial, the highest level, 35 for Counts 2 through 4,  
7 would be used, and that is appropriate in this case because  
8 those represent the gravamen of the prosecution.

9           Using a true criminal history category of I with a  
10 Level 35 produces a suggested guideline range -- and this is  
11 hypothetical, I repeat -- of 168 to 210 months. That range is  
12 generally in line with what the Sentencing Commission  
13 statistics indicate. For the same period, 2009 to 2011, the  
14 average sentence imposed on convictions under 2339B was 179 and  
15 a half months, and the median was 135. For convictions under  
16 2339A the average sentence was 164.7 months, and the median was  
17 144. For convictions under both sections the average was  
18 171.5, and the median 112.5. The numbers are substantially  
19 higher when a conviction under 956 is involved, as it is here,  
20 although, again, the sample size is very small for these cases.  
21 For convictions under 956 alone -- and there are a total of 12  
22 in the relevant period -- the average sentence was 276.3  
23 months, and the median 222. For the five convictions under  
24 both 2339A and 956, which is also the case here, the average  
25 sentence was 242 and a half months, and the median was 204.

1           Now, I've used a lot of numbers, and I don't mean this  
2 to be a mathematical computation. My point is simply to try to  
3 consult those non-Guidelines guidelines that might help make a  
4 decision about an appropriate sentence, having in mind what is  
5 legitimate, in my view, about the Guidelines and, two, the need  
6 to avoid unwanted disparities across cases. I should add, of  
7 course, that none of this comparison addresses the particular  
8 facts of any of the cases; this is simply outcomes only. But  
9 in sum, when the features of the relevant Guidelines here that  
10 I find to be defective are removed from the calculation, the  
11 resulting range is substantially consistent with what judges  
12 seem to have been actually doing in cases involving charges  
13 under the same statutes.

14           Now, proposing that hypothetical or "ghost" guideline,  
15 as I say, yields a suggested range, if we can even call it  
16 that, of 168 to 210. In coming to that conclusion, I have made  
17 two major judgments, disregarding parts of the Guidelines as  
18 written, that have been favorable to the defendant.

19           Taking consideration of all the factors in 3553(a),  
20 including, in particular, the need for just punishment for the  
21 offense, the need to protect the public from future offenses by  
22 the defendant, and the need to avoid unwanted disparity, I  
23 think it is appropriate to impose a sentence at the upper end  
24 of that range, hypothetical range, of 210 months.

25           So, Tarek Mehanna, if you would stand, please.

1 (The defendant complies.)

2 THE COURT: Tarek Mehanna, on your conviction of these  
3 offenses and pursuant to the Sentencing Reform Act, it is the  
4 judgment of the Court that you be and you hereby are committed  
5 to the custody of the Bureau of Prisons to be imprisoned for a  
6 term of 210 months. This consists of a term of 210 months on  
7 Count 4 of the second superseding indictment, terms of 180  
8 months on Counts 1 through 3 of the superseding indictment, and  
9 terms of 60 months on each of the Counts 5 through 7, all terms  
10 to be served concurrently.

11                   Upon your release from imprisonment you shall be  
12 placed on supervised release for a term of seven years, all to  
13 be served concurrently on each count.

14                    Within 72 hours of your release from the custody of  
15                    the Bureau of Prisons, you shall report in person to the  
16                    district to which you have been released.

17 Because it is highly unlikely that the defendant will  
18 have the wherewithal to pay a fine, I will not impose any  
19 monetary fine.

20                   While you're on supervised release you shall comply  
21 with all the standard conditions that pertain to that status.  
22 Those are set forth in the United States Sentencing Guidelines  
23 at Section 5D1.3(c). They're incorporated now by reference but  
24 will be set forth at length in the judgment.

25 In addition to those standard conditions, you shall

1 comply with the following conditions of supervised release:  
2 You shall not commit another federal, state or local crime; you  
3 shall not illegally possess any controlled substance. I will  
4 not impose any drug-testing conditions. There's no indication  
5 of substance abuse.

6 You shall submit to the collection of a DNA sample as  
7 directed by the probation office. You're prohibited from  
8 possessing a firearm, destructive device or other dangerous  
9 weapon.

10 There is a mandatory assessment on each conviction of  
11 a felony offense in the amount of \$100, which accumulates to  
12 \$700, and that assessment is due forthwith.

13 THE CLERK: Tarek Mehanna, you have the right to file  
14 a notice of appeal in this case. If you do wish to file an  
15 appeal, you must file it within 14 days from the date the  
16 judgment is entered. If you cannot afford an attorney to file  
17 the appeal on your behalf, you may request the clerk of the  
18 court to file the appeal for you and I will do so.

19 Do you understand, sir?

20 THE DEFENDANT: Yup.

21 THE COURT: All right.

22 MR. CHAKRAVARTY: Your Honor, I'm not sure the  
23 appropriate time to register for the record the government's  
24 objections to the Guidelines calculation and the sentence and  
25 the reasonableness of the sentence, but I want to make sure

1 that's on the record.

2 THE COURT: Noted.

3 All right. The defendant stands committed in the  
4 custody of the marshal. We'll stand in recess.

5 THE CLERK: All rise. The Court will be in recess.

6 (The Court exits the courtroom and the proceedings  
7 concluded at 12:50 p.m.)

8

9 C E R T I F I C A T E

10

11 I, Marcia G. Patrisso, RMR, CRR, Official Reporter of  
12 the United States District Court, do hereby certify that the  
13 foregoing transcript constitutes, to the best of my skill and  
14 ability, a true and accurate transcription of my stenotype  
15 notes taken in the matter of Criminal Action No.

16 09-10017-GAO-1, United States of America v. Tarek Mehanna.

17

18 /s/ Marcia G. Patrisso  
19 MARCIA G. PATRISSO, RMR, CRR  
Official Court Reporter

20

Date: May 16, 2012

21

22

23

24

25